International Union of Electrical, Radio and Machine Workers, AFL–CIO, Local 745 (National Electric Coil, a Division of McGraw-Edison) *and* Wayne A. Martin. Case 9–CB–4778

August 25, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On January 18, 1982, Administrative Law Judge Martin J. Linsky issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed exceptions and an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

CHAIRMAN VAN DE WATER, dissenting:

I find, contrary to my colleagues, that the General Counsel has established by a preponderance of the evidence that union representatives Dean Beamer and Earl Rudder threatened Wayne Martin with a $1,000 fine if he testified on behalf of the Employer at an arbitration hearing.

Briefly, the record reveals that in September 1979 Respondent informed its members in a newsletter that it was concerned at the increasingly frequent occasions the Employer "coerced members to give evidence in disciplinary actions against fellow members" and indicated that discipline against members for such conduct could include fines. Shortly thereafter, employees Martin and Freddie Jordan observed employee David Woods drinking beer inside the plant during working hours. Woods was discharged for this offense and subsequently filed a grievance with Respondent. Martin and Jordan agreed to testify on behalf of the Employer against Woods at the scheduled October 1980 arbitration proceeding.

On two occasions in August 1980, union stewards Beamer and Rudder allegedly informed Martin that he would be fined if he testified against Woods at the arbitration hearing. On the first occasion, Martin and Jordan testified that they were threatened by Beamer with a $1,000 fine if they proceeded to testify. Martin also testified that the same threat was later made to him by Rudder. Beamer and Rudder denied making such threats.

At the arbitration hearing, both Martin and Jordan testified on behalf of the Employer against Woods which resulted in the arbitration upholding the discharge. Following the hearing, an edition of Respondent's newsletter likened Martin and Jones to Judas. Their names were circled in red and the newsletter was personally handed to Martin by union steward Elliott Jones.

In adopting the Administrative Law Judge's highly questionable credibility findings[2] that Martin was not threatened with a fine, my colleagues rely on the fact that no fine was levied and that Martin did not work on the dates he testified that the threats were made.

[1] The General Counsel contends that the Administrative Law Judge failed to make credibility resolutions necessary to support his findings and conclusions. We disagree. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless a clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. In so concluding, we note that the Administrative Law Judge failed to make explicit his credibility findings with respect to conflicting testimony of the Charging Party and employee Freddie Jordan, on the one hand, and union shop stewards Dean Beamer and Earl Rudder on the other. It is clear, however, from a reading of the Decision that the Administrative Law Judge implicitly resolved this conflict by accepting and relying on the testimony of Beamer and Rudder. We also note, contrary to the General Counsel's contention, that the Administrative Law Judge's findings were based on his consideration of the entire record, including observations of the witnesses and their demeanor.

Chairman Van de Water, in his dissent, chooses to resolve the conflict differently. Both Martin and Jordan's testimony relating the work shifts and dates on which the alleged threats were delivered are in clear conflict with established facts and documentary evidence: The Administrative Law Judge closely scrutinized Martin's testimony concerning the dates and shifts by recalling him to the stand and obtaining reaffirmation of his earlier testimony on these details, along with assurance that he had carefully documented the alleged incidents on his home calendar within a day or two of their taking place. In the face of these inconsistencies, we cannot conclude that the strict evidentiary standard for overturning credibility resolutions established under *Standard Dry Wall Products, supra*, has been met and shall not embark on a needless departure from that standard to reject findings of credibility by an Administrative Law Judge who heard the testimony, observed witnesses' demeanor, and witnessed their cross-examination.

[2] In his analysis section, the Administrative Law Judge states, "Since I give no greater weight to Martin's claims that the threats were uttered than I do to the denials of shop stewards Beamer and Rudder, as a matter of law, I must conclude that it has not been proven that Respondent engaged in unfair labor practices." This of course shows that the testimony of the shop stewards was not given controlling weight. In view of the documentary evidence (the union newsletters) supporting Martin's testimony and the corroborating testimony by Jordan, I find the Administrative Law Judge's credibility findings *incredible*.

In my view, these findings cannot withstand analysis. The fact that Martin was not fined in no way supports a finding that the threats were not made. Indeed, the filing of the charge herein might well have discouraged Respondent from carrying out its threats. I am equally unimpressed that Martin may have been mistaken over the specific dates on which the threats were made where the hearing herein took place over 1 year later.

I am persuaded that the only plausible conclusion that can be drawn is that the threats were made. As indicated above, shortly before the dispute arose Respondent circulated a newsletter threatening members with the possibility of fines if they supported the Employer in disciplinary action against fellow members. Further, Respondent circulated a newsletter after the arbitration proceeding accusing Martin of being a Judas because he testified against Woods. Finally, one of the threats against Martin was corroborated by employee Jordan.

Having concluded that the threats of a fine against Martin for testifying on behalf of the Employer at an arbitration hearing were in fact made, I therefore find that Respondent violated Section 8(b)(1)(A) of the Act.[3]

[3] *United Steelworkers of America, AFL-CIO-CLC, Local 1981 (Major Safe Company, Inc.)*, 259 NLRB 404 (1981); *Amalgamated Transit Union, Division No. 825 AFL-CIO (Transport of New Jersey)*, 240 NLRB 1267 (1979).

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge: This case was heard before me on October 15, 1981, in Columbus, Ohio. The charge was filed by Wayne A. Martin on December 19, 1980. On January 29, 1981, a complaint was issued alleging two violations of Section 8(b)(1)(A) of the National Labor Relations Act, herein Act, by the International Union of Electrical, Radio and Machine Workers, Local 745, AFL-CIO-CLC, herein Respondent.

Respondent filed an answer in which it denied that it violated the Act.

Upon the entire record, to include consideration of briefs filed by the General Counsel and Respondent, and from my observations of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

National Electric Coil, a Division of McGraw-Edison, herein called the Employer, is a Delaware corporation with an office and place of business at in Columbus, Ohio, where it is engaged in the manufacture of electric coils for generators and transformers.

During the 12 months period prior to January 1981, which is a representative period, the Employer in the course and conduct of its business operations sold and shipped from its Columbus, Ohio, facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Ohio.

The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The International Union of Electrical, Radio and Machine Workers, Local 745, AFL-CIO-CLC, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent violated Section 8(b)(1)(A) of the Act when on two occasions union shop stewards threatened Wayne Martin, the Charging Party and a member of Respondent Local, with a $1,000 fine if he testified on behalf of the Employer at a scheduled arbitration hearing.

Wayne Martin worked on the third shift at National Electric Coil. The hours for the third shift were from 11 p.m. to 7 a.m. In October 1979, he saw David Woods drinking beer inside the plant during working hours. David Woods, also a member of Respondent Local, was fired and Respondent filed a grievance protesting Woods' discharge. Wayne Martin was asked by management if he would be a witness for the Employer against David Woods. He said he would be a witness. The grievance procedure under the collective-bargaining agreement commenced in October 1979 and eventually an arbitration hearing was scheduled for October 1980. Following the hearing, the arbitrator upheld the discharge of David Woods based on a violation of a company rule which prohibited drinking on the job. Wayne Martin was a witness against David Woods as was Freddie Jordan, another employee and member of Respondent Local.

Shortly after the arbitration hearing was held, an edition of Respondent Local's newsletter was circulated in the plant. In this newsletter both Wayne Martin and Freddie Jordan were likened to Judas Iscariot because they had testified on behalf of the Company against a fellow union member. A copy of that newsletter with the information about Martin and Jordan circled in red was personally handed to Martin by Elliott Jones, a union steward on Martin's shift.

In December 1980, Martin filed a charge against the Union with the National Labor Relations Board. The investigation of the charge led to the complaint in this case. The complaint alleges two specific occasions in August 1980 in which the Union is charged with violating Section 8(b)(1)(A). I will treat each separately.

A. *The August 7, 1980, Incident*

Wayne Martin claimed that at approximately 11 p.m. on August 7, 1980, Dean Beamer threatened that Martin would be fined $1,000 by the Union if he testified on

behalf of the Employer at David Woods' arbitration hearing.

Dean Beamer was one of the shop stewards on the second shift at National Electric Coil. As noted earlier, Wayne Martin worked on the third shift. Martin testified that Beamer threatened him shortly before the change of shift, when Beamer was going off work and Martin going to work. Dean Beamer denied that he ever threatened Wayne Martin or said anything about the Union fining him if he testified for the Employer.

The General Counsel has *not* met his burden of proof with respect to this alleged violation. There was evidence at the hearing which tends to corroborate Wayne Martin and there was evidence which tends to contradict him. In light of all the evidence I must conclude that the General Counsel has not met his burden of proving his case by a preponderance of the evidence. *Blue Flash Express, Inc.*, 109 NLRB 591 (1954).

The evidence which tends to corroborate Martin in addition to the October 1980 edition of Respondent's newsletter discussed above is as follows: (1) In September 1979 an issue of Respondent's newsletter reported that the executive board of Respondent Local was "deeply concerned about the increasingly frequent occasions the company is using to coerce our members to give evidence in disciplinary actions against fellow members." (G.C. Exh. 3.) The newsletter article went on to state that members may be brought up on union charges and disciplined, to include being fined by the Local, if they are found to engage in conduct detrimental to the welfare or best interests of the Local. (2) Freddie Jordan testified that he also was spoken to by Beamer at the same time as Martin. According to Jordan, Beamer said to him and Martin that they were going to be fined $1,000 for testifying against David Woods. Jordan could not remember the date when Beamer said this although he knew that it took place shortly before the 11 p.m. change of shift.

Beamer's denial that he ever threatened Martin is corroborated by the fact that no disciplinary action was ever taken against either Martin or Jordan although both testified against David Woods. In addition, documentary evidence, which I credit, shows that Beamer, who worked the second shift from 3 p.m. to 11 p.m., checked off work early on August 7, 1980. Beamer's timecard reflects that he checked in at 2:24 p.m. and checked out at 9:12 p.m. This evidence corroborates Beamer and casts doubt on Martin's testimony. I recalled Martin to the stand to ascertain how he fixed the date of August 7, 1980, as the date of the threat by Beamer and he testified that only a day or two after the incident he had noted it on a calendar he kept at home. He was sure about the date. I find as a matter of fact that the statement or threat was *not* made on August 7, 1980, and with regard to whether it was made at all I find that the General Counsel has failed to prove by a preponderance of the evidence that it was ever made.

B. *The August 9, 1980, Incident*

Wayne Martin testified that on August 9, 1980, Earl Rudder also threatened him when he stated to Martin near the time of the 7 a.m. change of shift that Martin would be fined $1,000 if he testified for the Employer at the David Woods' arbitration hearing. Martin was corroborated by the September 1979 and October 1980 editions of Respondent's newsletter, which were discussed above. Martin testified further that there were no witnesses to this threat by Earl Rudder.

Earl Rudder worked on the first or day shift and was a shop steward on that shift. The hours for the first shift were 7 a.m. to 3 p.m. Rudder denied that he ever threatened Martin or said anything to him about being fined by Respondent if he testified on behalf of the Employer. Rudder was corroborated by the fact that Respondent took no disciplinary action against Martin after he so testified. In addition, I credit the evidence which shows that August 9, 1980, was a Saturday and no one worked at the plant on that particular Saturday. I find as a matter of fact that no threat was made on August 9, 1980. As to whether the statement or threat was made at some other time I must conclude that the General Counsel has *not* proved by a preponderance of the evidence that it was. The testimony of Wayne Martin was sufficiently contradicted and impeached such that I cannot give it sufficient weight to sustain these unfair labor practice charges. Martin testified in response to my questions that he fixed the date of August 9, 1980, in the same manner that he fixed the date of August 7, 1980; i.e., within a day or two after the threat he noted it on his calendar.

C. *Analysis*

Since I give no greater weight to Martin's claims that the threats were uttered than I do to the denials of Shop Stewards Beamer and Rudder, as a matter of law, I must conclude that it has not been proven that Respondent engaged in unfair labor practices. I need not decide if the shop stewards were agents of Respondent nor must I decide whether the threats, if made, constituted unfair labor practices under Section 8(b)(1)(A).[1]

CONCLUSIONS OF LAW

1. National Electric Coil, a Division of McGraw-Edison, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not engaged in the unfair labor practices alleged in the complaint.

[1] My analysis of *Sunset Line and Twine Company*, 79 NLRB 1487 (1948), and *Local Union 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric Company)*, 138 NLRB 540 (1962), would lead me to conclude that Beamer and Rudder were agents of Respondent if I had found that they uttered the threats to Wayne Martin. My analysis of *United Steelworkers of America, AFL-CIO-CLC, Local 1981 (Major Safe Company, Inc.)* 259 NLRB 404 (1981), and *Amalgamated Transit Union, Division No. 825 (Transport of New Jersey)*, 240 NLRB 1267 (1979), would lead me to conclude that these threats, if uttered, would violate Sec. 8(b)(1)(A) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[2]

The complaint is dismissed in its entirety.

[2] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.